

PLANNING BOARD

MEETING MINUTES

NOVEMBER 21, 2019

Citizens' Hall, Lyndeborough, NH

Approved

Meeting called to order at 7:30pm by Acting Chairman Bob Rogers.

Roll Call: Acting Chairman Bob Rogers, Vice Chair Tom Chrisenton, Selectmen's Representative Mark Chamberlain, Larry Larouche, Bret Mader and Alternate Julie Zebuhr. Not present Mike Decubellis and Chairman Paul Best.

Guests: Michelle Duplease, Rick Duplease, John Dick, Jr., Ellen Martin, Paul Martin, Frank Kling, Real Estate Agent Karl Zahn, Road Agent Mark Chase, Building Inspector/Code Enforcement Office Leo Trudeau

New Business:

Wood Lot Change of Status, Map 232, Lot 054 on Putman Hill Road

Notification: Certified letters were mailed to abutters and a Public Notice was printed in the Milford Cabinet on October 31, 2019 and posted in two public places.

John Dick, Jr. owns the property. Rick and Michelle Duplease would like to purchase the lot with the intention to subdivide into two lots for family members. They would like confirmation that this lot is a buildable lot before they purchases it.

B. Rogers asked abutter Ellen Martin if she knows why Map 232, Lot 054 is listed as a "Wood Lot Only". Ellen Martin responded that she does not know why it is a wood lot and her father never mentioned the reason for this before he died. She said they got their wood off this lot. Ellen's mother sold the lot to Mr. Dick.

Abutter Paul Martin stated the property is rocky, wet and has many vernal pools. He has concerns that water would run down into his property. He objects to this lot being made a buildable lot.

Bob Rogers realizes that the lot is wet. They have not seen any evidence that it cannot be a buildable lot. The Building Inspector would have to approve any building permits.

Ellen Martin also shares the concern about water. Mr. Martin felt they would have to suffer the consequences if homes were built there. He is willing to purchase the lot to keep it as a wood lot.

After a discussion, it was decided to invite Lucy Schmidt to provide background information as to why this was made a "wood lot only" during the 1991 subdivision. It was recognize that Mrs. Schmidt no longer owns the lot and the notes on the map left it up to the Planning Board to decide if that status changes.

VOTE: Mark Chamberlain made motion to continue the hearing until next month. Julie Zebuhr seconded the motion. Discussion.

B. Rogers asked Mr. Dick if he had a discussion with Lucy Schmidt when he purchased the land. He said he did. He said he was a resident from 1967-1976 and he owned the store and the house behind the store. He said at that time, Mrs. Schmidt asked what he was going to do with the land and he said he wanted to cut wood off it. He believes that is the reason for the stipulation. Mr. Dick and Mr. Ed Schmidt cut wood from that land together. Now 28 years have passed and he no longer cuts wood from the lot and does not need the land anymore.

B. Rogers would like to get testimony from Lucy Schmidt, either in person or written, regarding her restrictions on Map 232, Lot 054.

Leo Trudeau asked the Board to give careful consideration to the original intent.

VOTE: Amend the vote to continue the meeting until next month to include testimony, in person or in writing, from Lucy Schmidt and the notification of the land survey company, TF Moran, Inc., that is listed on the 1991 subdivision plan. Motion passed 6-0.

Ellen Martin will be responsible for notifying her mother, Lucy Schmidt, about the Planning Board's request for testimony on the intent of the 'wood lot only' restriction.

Mr. Dick asked why something that happened 28 years ago affects what is happening today. The Board would like to know more about the condition before they dismiss it.

Driveway Appeal for Sight Distance, Map 210, Lot 12 on Mountain Road.

Frank Kling presented an authorization letter from his son, Joseph Kling, allowing Frank Kling to represent Joseph Kling.

Prior to tonight's meeting, members were emailed the January 3, 2013 Zoning Board of Adjustment meeting minutes to review. At that time, Patricia Robbins owned the lot. A variance was granted for setback requirements. B. Rogers read a paragraph from the minutes in which Attorney Quinn felt the sight distance was not a problem. It appears that no one challenged his statement from the minutes. Mr. Kling purchased the land four days later. *(See attached)*

Leo Trudeau mentioned that the variance did not grant Mr. Kling the right to build on the lot but it granted relaxed setbacks. He asked if Attorney Quinn noted that sight distance was not a problem, he wondered how Attorney Quinn could say that without measuring the distance. The Board believes that Attorney Quinn did not measure the sight distance.

Bob Rogers mentioned that in general, a Notice of Decision could be more specific about what it granted. He noted the land is still subject to all other laws and regulations to the town.

The Board discussed that this lot does not meet the sight distance. Mr. Kling felt that it met the State regulation. Selectman Chamberlain disagreed. The difference between the DOT and the NH Department of Environmental Services was discussed.

Acting Chairman Bob Rogers made it clear that the Road Agent was entirely correct to deny the driveway permit because it does not meet the sight distance zoning regulations. On a 30 MPH road it does not comply. As measured, it has 214 feet to the south and 238 feet to the north.

The Town used Mr. Kling's lot as a staging area during the Mountain Road Reconstruction Project but as Leo Trudeau pointed out, there was traffic control measures in place during that time.

Mr. Kling referenced page 354 from the AASHTO Green Book. Mark Chamberlain clarified this is for approaching traffic and discussed the stopping distance on a slope. Mr. Kling agreed that if looking at it from that point of reference, the sight distance does not meet the regulations.

Tom Chrisenton discussed other driveways on Center Road with sight distance concerns.

Mr. Kling said they plan to build a smaller house. The lot is only 18/100ths of an acre.

Mark Chamberlain suggested putting the driveway on the downhill side. Bob Rogers discussed constructing a turn-around stub and for cars not to back-up into Mountain Road. Mr. Kling agreed. Other conditions were discussed such the applicant paying for two official "Blind Driveway" signs installed by the Highway Department, the location of the signs, no parking on the paved road, and ensure that no vegetation should impact the sight distance.

VOTE: Mark Chamberlain moved, Julie Zebhur seconded to grant the driveway permit conditional on:

- 1. Applicant shall pay for a "Blind Driveway 200 feet" signs to be erected on Mountain Road and installed 200 feet south of the driveway.**
- 2. No vehicles shall back onto Mountain Road. The driveway shall include a turning stub that will be available to all parked vehicles and shall be kept clear at all times.**
- 3. The applicant/homeowner shall insure that no vegetation reduces sight distance.**

Discussion: The applicant was made aware that nothing should be put in the right-of-way which includes a lamp post or well.

Building Inspector/Code Enforcement Officer Leo Trudeau said the proposed well is 7.5 feet from the pavement. With the well location so close to the road, Mr. Trudeau is concerned the well could become contaminated. Mountain Road is a heavily traveled road that uses salt. It is a school bus route.

VOTE: Motion passed 6-0.

Acting Chairman Rogers made it clear that this vote above does not guarantee the landowner will get a building permit.

The applicant has submitted an updated septic and well design. Plans call for a two bedroom home. Mr. Kling plans to build the house then sell it.

The applicant will require waivers from the Town and abutters due to the well radius and its effect on other properties.

It was decided that Mr. Kling shall apply for a new driveway permit. Selectman Mark Chamberlain will make out a new driveway permit. Mr. Kling was advised to ensure the new applicant does not specify the driveway meets the 300 feet requirement as the previous application stated.

Building Code Zoning Amendments

Building Inspector/Code Enforcement Officer Leo Trudeau previously submitted proposed amendments to the Building Code for review and a discussion continued.
(see Town Hall for copies)

VOTE: Bob Rogers moved, Tom Chrisenton seconded to hold a public hearing on the October 17, 2019 version of the proposed Building Code Zoning amendments. The Public Hearing will be on December 19, 2019. Motion passed 6-0.

Old Temple Road West/Beasom Road Five-Lot Subdivision, Map 241, Lot 12

The applicant was not present.

The secretary brought it to the attention of the Board that there is a map that has been shown to the Fire Chief regarding this property. The Road Agent requested to see the map also. The concern is that department heads are having a discussion with the applicant utilizing a map that has not been approved. It was discussed that any proposed map is non-binding until the Planning Board approves it. The Fire Chief, Road Agent and Building Inspector report to the Planning Board.

Tom Chrisenton recused himself

The secretary will inform the Fire Chief that there is no approved plan for this above mentioned five-lot subdivision and to inform the Fire Chief that any plans to be reviewed, should be provided from the Planning Board. A letter outlining this procedure will be sent to Building Inspector Leo Trudeau, Police Chief Rance Deware, Fire Chief Brian Smith, and Road Agent Mark Chase. The firm representing the five-lot Old Temple Road/Beasom Road subdivision will be copied on this correspondence.

Tom Chrisenton is back on the Board.

Driveway permits, intents to cut, or gravel excavation permits

There are no permits to review.

Business Not on the Agenda:

Road Agent Mark Chase regarding a driveway clarification, Map 250, Lot 14

Real Estate Agent Karl Zahn and Road Agent Mark Chase were present.

Mr. Zahn has an offer from Mr. Gill to purchase a 54-acre property off Center Road, Map 250, Lot 14. This property does not have any road frontage and is currently owned by Jean Family Rev. Trust of 2008. A driveway cannot come off Center Road due to State regulations. Abutter Paul Hebert is agreeable to sell a 50-foot easement, which would allow the driveway to come off Chase Road, but the proposed driveway location would be closer than 150 feet to the intersection of Center Road.

Mr. Zahn previously discussed a shared driveway with Paul Hebert, who just purchased the lot subdivided from Pam Holt's lot. (See: *Pam Holt: Map 247, Lot 25. Paul Hebert: Map 247, Lot 25-1. Easement from Pamela Holt to Robert G. Jean, dated Sept. 8, 2017, recorded at HCRD Doc. # 704244, Book 9005, Page 0314*)

Mr. Zahn explained that Bob Jean did an easement a few years ago across Pam Holt's property and comes off Chase Road about 75 feet from Paul Hebert's driveway. It was acknowledge that the Chase Road intersection is challenging. The lot owners are agreeable to move the easement to help with this driveway location resulting with the Jean and Hebert properties having a shared driveway. The driveway would be 90 feet from the Chase and Center Road intersection.

As a result of the above mentioned process, three homes would come off Chase Road which is a dead end road: Morrison, Herbert, and Jean. Perham Corner Cemetery is off Chase Road.

It was confirmed that Map 250, Lot 14 is the lot set behind the fields and is not part of Dave Milton's farm. The property was formerly owned by Charlie Haywood. It is also not the tiny lot with the barn owned by Barry True. The real estate sign was just placed his sign in this area.
PB, 11-21-19

The current easement could create a 1,500 foot driveway but this driveway location would not be approved by the State due to sight distance.

The Board discussed that the driveway would need to allow reasonable access for fire safety equipment.

Section 1302.00 was reviewed.

1302.00 *Lots of Record:*

Where a lot of record at the time of the effective date of this Ordinance has less area and/or frontage than herein required in the District in which it is located:

- 1) The lot may be used for a single family dwelling if permitted in that district subject to New Hampshire Water Supply and Pollution Control Division approval and subject to all district regulations applicable to lots within the District wherein the lot is located with the exception of lot size and/or frontage.*
- 2) The lot may be used for any non-residential use permitted in the District in which it is located subject to New Hampshire Water Supply and Pollution Control Division approval and subject to all district regulations applicable to lots within the District wherein the lot is located with the exception of lot size and/or frontage.*

The Selectmen would require a document that would hold the town harmless (absolve from liability) for the driveway and require the document to be registered at the Hillsborough County Registry of Deeds.

VOTE: Mark Chamberlain moved, Larry Larouche seconded to instruct the Road Agent to issue a driveway permit with access less than 150 feet from an intersection for Map 250, Lot 14. Motion passed 6-0.

Correspondences:

Email from Bob Bell, dated 11-11-19, sent to the Planning Board Secretary.

Bob Rogers read the correspondence into minutes.

"I have contacted both the landscaper and Peter M. (MacLellan of Granite State Concrete) about the dead plantings and am being ignored by both. Would it be possible to start proceedings to revoke the excavation permit until this matter is resolved for good? IT HAS BEEN DRAGGING ON FOR OVER 20 YEARS."

It was discussed that Mr. Bell signed an agreement with Peter and John MacLellan regarding the buffer and at that time he was satisfied with it. The Board agreed to hold a site walk in May 2020 to visit Mr. Bell's property to look at the buffer and determine what needs any action for this situation. A site walk date will be set at the April 16, 2020 Planning Board meeting.

Approve Minutes:

VOTE: Bret Mader moved, Larry Larouche seconded to accept the October 17, 2019 minutes as amended. Motion passed 6-0.

Agenda:

-Duplease "wood-lot only" continued. A certified letter will be sent to surveyor, TF Moran.

-Public Hearing for Building Code changes to start at 7:30 p.m. (send public hearing notice to the newspaper)

Pending Items:

-Old Temple Road/Beasom Road 5-Lot Subdivision continued to spring 2020.

-At the April 2020 meeting, schedule site walk for Bob Bell's property that abuts Granite State Concrete. The site walk shall be scheduled for May 2020.

VOTE: Tom Chrisenton moved, Bob Rogers seconded to approve the agenda. Motion passed 6-0.

VOTE: Mark Chamberlain moved, Larry Larouche seconded to adjourn at 9:15 p.m. Motion passed 6-0.

Respectfully submitted,

Kathleen Humphreys
Planning Board Secretary

TOWN OF LYNDEBOROUGH
ZONING BOARD OF ADJUSTMENT AGENDA
January 3, 2013

7:00 PM Call to Order & Roll Call

ANNOUNCEMENTS:

PUBLIC HEARING:

(1) Marcy Stanton Rev. Trust; Marcy Stanton, Trustee; 1414 Center Road; Map 226 Lot 010-000; variance for detached garage located in setback; Rural Lands I.

(2) Patricia Robbins Whitney; Mountain Road; Map 210 Lot 012-000; variance from setbacks on a lot of record; Rural Lands 2

MINUTES:

ADJOURNMENT:

*****This agenda is subject to change prior to the meeting date. Please check the website for any changes or updates.**

**TOWN OF LYNDEBOROUGH
ZONING BOARD OF ADJUSTMENT
MEETING MINUTES
January 3, 2013**

MEMBERS PRESENT: Chairman Tom Christenton, Lee Mayhew, Richard Roy and Alternate John Redemske, (Karen Grybko arrived at 7:10)

GUESTS: Marcy Stanton; Atty. Thomas Quinn and Frank Kling; Louis Springer

T. Christenton began the meeting at 7:00 p.m. noting that John Redemske would be voting in the absence of a full member.

PUBLIC HEARING:

Marcy Stanton Rev. Trust; Marcy Stanton, Trustee; 1414 Center Road; Map 226 Lot 010-000; variance for detached garage located in setback; Rural Lands I.

Present: Marcy Stanton

T. Christenton said that Ms. Stanton was requesting a variance for an 18' x 24' garage to be built within the 50' front setback. The plan shows that there's thirty (30) feet from the edge of the garage to the property line; twenty (20) feet less than required. He asked Ms. Stanton to explain how the five reasons for a variance have been met.

#1 Variance will not be contrary to the public interest because.....

The septic system/leach field and the well are located close to the residence. There are wetlands on the side and back of the property. There isn't any other place but the front of the property to construct a garage.

Lee Mayhew asked why a garage was needed. Ms. Stanton explained that a handicap ramp was to be built from the house to garage to accommodate wheelchair access. It was noted that the garage is not attached to the house.

#2 Special conditions exist such that literal enforcement of the ordinance results in an unnecessary hardship because.....

Wetlands and leach field consume most of the property area and there isn't any other place to construct a garage.

Lee Mayhew asked if there would be a cover over the ramp for shelter. Ms. Stanton said that a portico has been built over the front entrance door but presently there is no plan for a shelter over the ramp.

3 Variance is consistent with the spirit of the ordinance because.....

The ordinance states that the garage should be fifty (50) feet from the property line, but there's twenty (20) feet less than required. The conditions of the lot prevent placing the garage any further back.

John Redemske noted that there isn't any impact to the side setbacks; it's only closer to the road.

#4 Substantial justice is done because.....

Substantial justice will be done if Ms. Stanton is allowed to construct her garage within the setback. There will be accessibility to the residence for the wheelchair via a ramp. The other three sides of her property have obstructions because of wetlands and a septic system.

#5 Value of surrounding properties will not be diminished because.....

There isn't any impact to surrounding properties because the neighbor's house across the road is not close and her residence is not visible to other neighbors on each side of her property. The addition of a garage will enhance the value of the property and bring in tax revenue for the town.

Lee Mayhew said that the whole issue of the variance request is driven by the need to ease and protect wheelchair accessibility. Ms. Stanton agreed but also said that it was needed for storage, as well.

T. Chrisenton asked for abutter response. Karen Grybko, an abutter to the north of Ms. Stanton, said that she did not have any issues and thought that a garage would enhance the neighborhood; most residences in the area have a garage.

VOTE: Richard Roy made a **motion to approve the request for a variance for a detached garage in the setback.** Lee Mayhew seconded the motion and the VOTE in favor of the approval was unanimous.

Karen Grybko, having recused herself because she is an abutter to Ms. Stanton, took her seat for the next public hearing.

Patricia Robbins Whitney; Mountain Road; Map 210 Lot 012-000; variance from setbacks on a lot of record; Rural Lands 2

Present: Atty. Thomas Quinn and Frank Kling of Elite Construction; abutter Louis Springer

T. Chrisenton said that Frank Kling of Elite Construction was requesting an area variance to build a single family residence with two bedrooms on a .2 acre lot of record which is located on Mountain Road.

Atty. Quinn, representing Mr. Kling, asked to discuss a preliminary matter concerning an outdated form for an area variance which he found on the town's website. New language was adopted and went into effect in January 2010. T. Chrisenton informed Atty. Quinn that the Board was to review these new forms at the end of this meeting.

Atty. Quinn said that he would be using applicable law in his presentation and noted that RSA 674:33 allows the Zoning Board authority to grant relief from strict terms of the zoning ordinance, if the five requirements are met.

#1 and #2 variance will not be contrary to the public interest and is consistent with the spirit of the ordinance because.....

The first two tests are similar. Under existing case law, it is the obligation of the ZBA to judge whether granting a variance is not public to the contrary interest and is consistent with the spirit of the ordinance and must determine whether to grant the ordinance unduly and in a marked degree conflict with the ordinance, such as violates the ordinance's basic zoning objectives. It must determine that granting the variance will alter the essential nature of the neighborhood or threaten the public health safety and welfare of the town.

In his opinion, the proposed use would not unduly in a marked degree conflict with the ordinance or violate the ordinance's basic zoning objective. The obvious objective to the zoning ordinance in this case is to prevent an undue concentration of housing, unsustainable density, blight, etc. This is a lot of record that has existed since 1898 and has not changed. (A copy of the deed was submitted at this time)

T. Chrisenton read the language in the town's zoning ordinance under Section 1302:00 Lots of Record. Atty. Quinn understood that this parcel is a grandfathered lot of record and is a Permitted Use. If they could meet the setback requirements, there wouldn't be a problem but because of the lot size and the severity of the setbacks, the requirements cannot be met. The 8000 sq. ft. lot has 80 ft. of frontage and 100 ft. of depth; therefore the setbacks consume the lot.

Atty. Quinn explained that the two car garage will be under the dwelling and an approved septic design is noted on the plan. John Redemske asked if a driveway permit was granted. Atty. Quinn replied no; it was suggested that the variance should be granted before going before the Building Inspector or Road Agent for a permit. He noted that the sight distance was not a problem.

#3 Substantial justice is done because.....

In the spirit of the ordinance, the grandfather law was to protect lots of record; in many instances, it is possible to take a substandard lot and meet the requirements. Because of the unique nature of the lot and the proposal is a modest one, substantial justice is done. In asking the Board to reduce the setback, they are proposing a smaller dwelling with two bedrooms. Lee Mayhew asked for the dimensions of the house. Mr. Kling said that the house size will be 36' x 40' and includes a 20' x 20' ft. garage underneath (photograph of the proposed house design was submitted). Atty. Quinn said that the engineer came up with the 15 ft, 25 ft setbacks to be able to fit a reasonable size house in the building envelope. T. Chrisenton asked where the deck was located. Mr. Kling replied that it was in the rear, cantilevered over the septic system area.

#4 Value of surrounding properties will not be diminished because.....

The proposed use is a permitted one and is reasonable in light of the size of the lot; no diminishing value to the surrounding properties will occur if the variance is granted. Atty. Quinn submitted a letter from Bobby Gaudette, the listing realtor for the Bean Group who states that because it is a single family home it would have no adverse effect on the property value in the neighborhood. Karen Grybko said that she liked the photo of the proposed dwelling since the structure will be located only 25 ft from the road and visible in the neighborhood.

#5 Special conditions exist such that literal enforcement of the Ordinance results in unnecessary hardship...

The special conditions of the lot, its size, configuration, location, etc distinguish it from other properties in the area and no fair and substantial relationship exists between the general public purposes of the ordinance and its specific application of the provision to the property. The proposed use is a reasonable one. It's a small house with two bedrooms on a slab; a modest proposal for a home and well suited to the size of the lot. The septic design will not support more than a two bedroom home. The literal interpretation of the ordinance precludes from the owner from building anything. Because single family dwelling are the only permitted use in this zone, it effectively denies any other use of the property. It is a unique lot surrounded by large acreage parcels that can meet all zoning requirements. The purpose of the ordinance is to prevent blight, crowding and inadequate distance between structures, i.e. over development of the lot. In their proposal, the building envelope is approximately 1/3 the size of the lot (2500 sq. ft.). By building a smaller house and locating it in such a way that it doesn't overdevelop the lot; this is a reasonable request.

T. Chrisenton asked for questions from the abutters. Mr. Springer asked for the setbacks and was told 15 ft on the sides and 25 ft. on the front and 35 ft. on the back. He was shown where the well and the septic system would be located. John Redemske voiced

concern about vehicles being parked in the driveway. Karen Grybko thought the house style suggested was reasonable. Lee Mayhew did not think limiting the number of cars could be enforced. Mr. Springer asked if business equipment would be stored on the property and Mr. Kling responded no. Appearing satisfied, Mr. Springer did not have other issues.

Having no further questions, T. Chrisenton and the Board deliberated on suggested conditions to be placed on the variance, i.e. structure to be built similar to the footprint shown; no building in the area over the septic system; number of vehicles to be stored in the garage and the building constructed so it doesn't detract from the neighborhood.

VOTE: Lee Mayhew made a **motion to approve the area variance from the setbacks subject to the following conditions: build to the conformity of the house plan presented (photograph attached) and according to Meredian's septic design dated October 11, 2012 (Project 7917.01).** Richard Roy seconded the motion and the VOTE in favor was unanimous.

OTHER BUSINESS:

T. Chrisenton said that he would send out, through e-mail, the new updated forms for a variance, special exemptions, appeals, etc. These forms will be discussed at the next meeting. He also said that the fee schedule should be a topic for discussion, as well.

T. Chrisenton mentioned that more Alternates are needed on the Board and that this was the last meeting for Alternate John Redemske. He said that Scott Roper has shown interest in becoming an Alternate and could replace John Redemske.

VOTE: Lee Mayhew made a **motion to approve Scott Roper as an Alternate to replace John Redemske.** Richard Roy seconded the motion and the VOTE for approval was unanimous.

ADJOURNMENT:

T. Chrisenton made a **motion to adjourn the meeting at 8:25 p.m.** Richard Roy seconded the motion and the vote in favor of adjournment was unanimous.

The next meeting will be held on Thursday, February 7th at 7:00 p.m.

Pauline Ball
Recorder